

C O N F I D E N T I A L

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF NORTH CAROLINA

DURHAM DIVISION

LIGGETT GROUP, INC.

PLAINTIFF

-against-

BROWN & WILLIAMSON TOBACCO
CORPORATION

DEFENDANT

BROWN & WILLIAMSON TOBACCO
CORPORATION

PLAINTIFF

- against-

LIGGETT GROUP, INC. and
GENERIC PRODUCTS CORPORATION,

COUNTERCLAIM-DEFENDANTS

CIVIL ACTION
NO. C 84-617-D

* * * * *

DEPONENT: BARTON H. FREEDMAN

DATE: June 28, 1985

REPORTER: ALICE TANNENBAUM

* * * * *

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824 13751

CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

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ALSO PRESENT:

Elizabeth Porman, Webster &
Sheffield

* * * * *

The deposition of BARTON H. FREEDMAN was taken on behalf of the Plaintiff, before Alice Tannenbaum, Notary Public for the State of Kentucky at Large, in the offices of Woodward, Hobson & Fulton, 2500 First National Tower, Louisville, Kentucky, on June 28, 1985. Said deposition was taken pursuant to notice and subpoena for purposes of discovery and as provided by the Federal Rules of Civil Procedure.

* * * * *

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IT IS HEREBY STIPULATED AND
AGREED, by and among the attorneys for the respective
parties herein, that the sealing and filing of the
within deposition be waived; that such deposition may
be signed and sworn to before any officer authorized
to administer an oath, with the same force and effect
as if signed and sworn to before the officer before
whom said deposition is taken.

IT IS FURTHER STIPULATED AND
AGREED that all objections, except as to form, are
reserved to the time of trial.

* * * * *

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Freedman

1 BARTON FREEDMAN,
2 called upon oral examination by counsel for the
3 Plaintiff, after having been first duly sworn, was
4 examined and deposed as follows:

5 MR. FLUMENBAUM: Before we start
6 I'd like to make a brief statement on the record. Mr.
7 Freedman was served with the notice of deposition. He
8 is counsel for Brown & Williamson. We subsequently
9 informed counsel for Liggett that Mr. Freedman
10 intended to assert all applicable attorney-client and
11 work product privileges. Nevertheless, Liggett
12 insisted that Mr. Freedman appear here.

13 He is here; however, his
14 appearance here is not to be interpreted in any way as
15 any waiver of any attorney-client privilege or work
16 product privilege, and we do intend to assert all
17 existing privileges to the full extent applicable.
18 You may proceed.

19 MR. HOGELAND: Okay.

20 * * * * *

21 DIRECT EXAMINATION

22 BY MR. HOGELAND:

23 Q. Mr. Freedman, would you state
24 your full name for the record, please?

25 A. Barton H. Freedman.

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Freedman.

1 Q. You are employed at Brown &
2 Williamson; is that correct?

3 A. Yes.

4 Q. Where is your office?

5 A. 1500 Brown & Williamson Tower,
6 Louisville, Kentucky.

7 Q. And your home address?

8 A. REDACTED

9 REDACTED
10 Q. I think the situation as such,
11 we may try to telescope the usual warm-up questions.
12 I would like to state my understanding of your career
13 in the last 20 years, and you tell me whether I'm
14 right.

15 MR. FLUMENBAUM: Well, I'm going
16 to probably object to that as to form. Why don't you
17 ask questions?

18 Q. Do I correctly understand, Mr.
19 Freedman, that you received an undergraduate degree
20 from New York University in 1966 and a JD from Fordham
21 in 1969?

22 A. Yes.

23 Q. And were you employed as a staff
24 attorney of the Federal Trade Commission in Cleveland,
25 from 1969 to 1972?

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Redacted information not available for public review
because of individual privacy concerns.

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Freedman.

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1 A. I can't answer that question the
2 way you asked it.

3 Q. What did you do after you
4 received your law degree?

5 A. I was employed by the Federal
6 Trade Commission in Cleveland, Ohio, from 1969 to
7 1972.

8 Q. And did you then change jobs?

9 A. Yes.

10 Q. And what was your next job?

11 A. I was employed by General
12 Electric Company, Major Appliance Business Group,
13 Louisville, Kentucky, October 1972.

14 MR. FLUMENBAUM: He didn't ask
15 you a date.

16 Q. What was the period of your
17 employment at General Electric?

18 A. October 1972 through August
19 1975.

20 Q. What was the position you held
21 at General Electric?

22 A. I was an attorney.

23 Q. And that was here in Louisville?

24 A. Yes.

25 Q. With the Appliance Division; is

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Freedman

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1 that correct?

2 A. Appliance Group.

3 Q. Appliance Group. Did you give
4 substantive attention to the period of your employment
5 with General Electric to questions in any particular
6 area of the law?

7 A. Yes.

8 Q. What was the area or the areas?

9 A. Antitrust law, trade regulation
10 law, commercial law.

11 Q. Any others that come to mind?

12 MR. FLUMENBAUM: Are you asking
13 for areas which he devoted substantially most of his
14 time or anything --

15 MR. HOGELAND: No, that he gave
16 substantive attention to.

17 MR. FLUMENBAUM: As you know, a
18 lawyer has a broad range --

19 MR. HOGELAND: I think the
20 question is clear.

21 MR. FLUMENBAUM: I think he
22 answered it to the -- your original question I think
23 he answered.

24 Q. And then in 1975 you came to
25 Brown & Williamson; is that correct?

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Freedman

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1 A. Yes.

2 Q. When in 1975?

3 A. August 4th.

4 Q. As I understand it, you were a
5 staff attorney at Brown & Williamson from August 4,
6 1975 until 1979; is that correct?

7 MR. FLUMENBAUM: Objection as to
8 form.

9 Q. You may answer.

10 MR. FLUMENBAUM: Do you want the
11 question repeated?

12 MR. HOGELAND: Read it back.

13 (Whereupon the Court Reporter read the
14 record.)

15 A. I don't understand what you mean
16 by staff attorney, and I can't answer.

17 Q. What was your position at Brown
18 & Williamson beginning August 4, 1975?

19 A. I was an attorney in the law
20 department at Brown & Williamson.

21 Q. And --

22 A. From August 24th, 1975 till
23 whatever date in 1979.

24 Q. But you did not have a title
25 staff attorney; is that correct?

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Freedman

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1 A. I think I answered my title as
2 attorney.

3 Q. And not staff attorney?

4 A. I believe so.

5 Q. And then did your title change
6 in 1979?

7 A. Yes.

8 Q. And what did your title become
9 in 1979?

10 A. Marketing counsel.

11 Q. And that is your position today;
12 is that correct?

13 A. Yes.

14 Q. What were your duties -- let me
15 put it this way: Did your duties change when your
16 title changed?

17 A. Not that I can recall.

18 Q. Would you describe your duties
19 now as marketing attorney?

20 MR. FLUMENBAUM: Marketing
21 counsel is what he said.

22 MR. HOGELAND: Marketing
23 counsel.

24 A. I provide legal advice to
25 clients of Brown & Williamson who seek it from me,

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Freedman.

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1 mainly clients in the marketing area, but anybody else
2 who seeks legal advice.

3 Q. Are there particular areas of
4 the law to which you give substantive attention a
5 greater part of the time than other areas?

6 MR. FLUMENBAUM: Object as to
7 form, but you can answer that.

8 A. My primary area of
9 specialization is in the antitrust trade regulation
10 and related marketing law areas.

11 Q. In performing your duties as
12 marketing counsel, to whom do you report?

13 A. I report to the deputy general
14 counsel, vice president -- let me correct that, it's
15 vice president, deputy general counsel.

16 Q. As a practical matter in your
17 day-to-day performance of your duties, do you receive
18 directly assignments and requests for legal advice
19 from Brown & Williamson operating personnel?

20 A. Can I hear the question back,
21 please?

22 (Whereupon the Court Reporter read the
23 record.)

24 A. Yes.

25 Q. Are those Brown & Williamson

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Freeeman

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1 personnel primarily in the sales and marketing?

2 A. I receive many requests for
3 legal advice and assistance from marketing and sales
4 personnel.

5 Q. In performing your duties as
6 marketing counsel, do you give substantive attention
7 to such matters as pricing and pricing strategies?

8 MR. FLUMENBAUM: I'm going to
9 object as to form, and I think you are coming close to
10 asking substantive questions involving attorney-client
11 privilege. It's describing --

12 MR. HOGELAND: I'm asking
13 whether he gives substantive attention to that area.

14 MR. FLUMENBAUM: He's described
15 in general terms his responsibilities. You are
16 getting close to asking him specifically what he may
17 discuss with various people, and I will let him answer
18 this question, but I think you are going to -- I'm not
19 going to let him go beyond that if you are going to
20 try to get details as to any discussions or --

21 MR. HOGELAND: Let's not
22 anticipate problems, let's have this question which is
23 perfectly proper and doesn't go anywhere near the
24 attorney-client privilege.

25 MR. FLUMENBAUM: I think you are

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Freedman

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1 getting close.

2 MR. HOGELAND: Read the
3 question, please.

4 (Whereupon the Court Reporter read the
5 record.)

6 A. Yes.

7 Q. In performing those duties do
8 you give substantive attention to such matters as
9 design specifications for packages of cigarettes?

10 MR. FLUMENBAUM: Are you asking
11 in particular with any particular packaging or --

12 MR. HOGELAND: No, it's a
13 general question.

14 MR. FLUMENBAUM: We are dealing
15 with a specific lawsuit, though, and as you know from
16 documents and prior testimony, Mr. Freedman attended
17 certain meetings at which packaging was discussed, so
18 I'm just --

19 MR. HOGELAND: This is dis-
20 covery, Marty, I'm asking questions.

21 MR. FLUMENBAUM: But you are
22 asking discovery of a lawyer, and --

23 MR. HOGELAND: Yes.

24 MR. FLUMENBAUM: -- and a lawyer
25 who is charged with asserting attorney-client

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Freedman

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1 privilege, and, you know, I don't think it's an
2 appropriate deposition to start with, and again I
3 don't think -- I'll let him answer this because I
4 think based on the documents you know that he attended
5 some meetings that deal with packaging, so you know
6 what the answer is, but I'm not going to let him go
7 into detail on that. I'm just telling you that right
8 now.

9 MR. HOGELAND: Re-read the
10 question, please.

11 (Whereupon the Court Reporter read the
12 record.)

13 MR. FLUMENBAUM: Can you answer
14 that?

15 THE WITNESS: I'm having trouble
16 with the word specifications before I answer.

17 MR. FLUMENBAUM: Can you
18 rephrase the question?

19 MR. HOGELAND: I'm asking
20 another question now.

21 MR. FLUMENBAUM: Go ahead.
22 Q. What do design specifications
23 mean to you?

24 MR. FLUMENBAUM: Object as to
25 form. I instruct him not to answer.

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Freedman

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1 MR. HOGELAND: You are
2 instructing him not to answer?

3 MR. FLUMENBAUM: His role here
4 is not to answer what you mean by a term used in your
5 question. So I'm not going to have him --

6 MR. HOGELAND: You are
7 instructing him not to answer, Marty?

8 MR. FLUMENBAUM: That question,
9 yes, just that question as you worded it.

10 MR. HOGELAND: Do we have the
11 stipulations at the Hunter deposition agreed to, the
12 normal stipulations?

13 MR. FLUMENBAUM: Which are?

14 MR. HOGELAND: All objections
15 except as to form are waived and the signing can take
16 place anywhere.

17 MR. FLUMENBAUM: Are waived or
18 reserved?

19 MR. HOGELAND: Reserved.

20 MR. FLUMENBAUM: All objections
21 except as to form are reserved.

22 MR. HOGELAND: Re-read the
23 question, please.

24 (Whereupon the Court Reporter read the
25 record.)

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Freedman

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1 MR. HOGELAND: You've instructed
2 the witness not to answer?

3 MR. FLUMENBAUM: A term that he
4 never used that you used, and you are asking him what
5 he understands your term to mean, that question I think
6 is objectionable.

7 MR. HOGELAND: And you are
8 instructing him not to answer? I will press for the
9 answer.

10 MR. FLUMENBAUM: That's right.
11 I don't want him to guess what you mean by that
12 phrase. Ask him a question.

13 MR. HOGELAND: I did ask him a
14 question, you instructed him not answer it. I believe
15 the local practice is I would certify that.

16 (The question on Page 12, Line 22 was
17 certified to the Court for ruling.).

18 Q. In the course of your duties do
19 you give substantive attention to cost questions?

20 A. Cost of what?

21 Q. Cost of production of
22 cigarettes.

23 MR. FLUMENBAUM: That's an area
24 that's not permissible in this deposition under the
25 February 5th order.

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

Freedman

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1 MR. HOGELAND: I'm in dis-
2 covery, Marty, I can ask this question. Are you
3 instructing him not to answer?

4 MR. FLUMENBAUM: I don't think
5 that's a proper question.

6 MR. HOGELAND: Are you in-
7 structing him not to answer?

8 MR. FLUMENBAUM: Do you believe
9 that you can ask questions relating to cost in this
10 deposition?

11 MR. HOGELAND: I asked him if in
12 the course of his duties he gives substantive
13 attention to matters of costs. Are you instructing
14 him not to answer?

15 MR. FLUMENBAUM: I'll let him
16 answer that, but I think that's an improper question,
17 and I'm going to object as to form and based on the
18 outstanding order.

19 A. Yes.

20 Q. In the course of your duties do
21 you give substantive attention to customer lists?

22 MR. FLUMENBAUM: Objection as to
23 form. Can you answer that question?

24 A. I don't mean to be picky, but I
25 don't know what substantive attention to a customer

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Freedman

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1 list is.

2 MR. FLUMENBAUM: That's my
3 objection.

4 Q. Do you deal with customer lists?

5 MR. FLUMENBAUM: Does he see
6 customer lists?

7 Q. In the course of your duties do
8 you obtain information about customer lists?

9 MR. FLUMENBAUM: Objection. I
10 think that is going into the work product and
11 attorney-client matters.

12 MR. HOGELAND: Are you instructing
13 him not to answer?

14 MR. FLUMENBAUM: I'm objecting
15 on the grounds of attorney-client privilege and work
16 product.

17 MR. HOGELAND: I'm asking for an
18 answer to my question.

19 MR. FLUMENBAUM: I've objected
20 on grounds of attorney-client privilege --

21 MR. HOGELAND: Are you instructing
22 the witness not to answer?

23 MR. FLUMENBAUM: That particular
24 question, yes.

25 MR. HOGELAND: Well, again --

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Freedman

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1 MR. FLUMENBAUM: That's all
2 right.

3 MR. HOGELAND: I'll press for an
4 answer, and I'll certify it.

5 (The question on Page 16, Line 7 was
6 certified to the Court for ruling.)

7 MR. FLUMENBAUM: Just so the
8 record is clear, he also said he doesn't understand
9 what you meant by your question, but I think it's
10 objectionable as to form as well.

11 Q. In 1984, Mr. Freedman, did it
12 come to your attention that Brown & Williamson
13 intended to manufacture and market the generic
14 cigarette product?

15 MR. FLUMENBAUM: Objection.
16 Attorney-client privilege. Work product. Instruct
17 him not to answer.

18 MR. HOGELAND: Are you going to
19 instruct him not to answer any questions?

20 MR. FLUMENBAUM: As I indicated
21 to you in a letter that I sent to you after receiving
22 the notice, Mr. Freedman intended to assert all
23 applicable attorney-client and work product
24 privileges. You insisted that he appear here.

25 MR. HOGELAND: All right.

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

Freedman

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1 Q. In 1984, Mr. Freedman, did Brown
2 & Williamson commence the manufacture and sale of
3 generic cigarettes?

4 MR. FLUMENBAUM: I'm not going
5 to permit him to answer that on the grounds of
6 attorney-client privilege and work product privilege.

7 MR. HOGELAND: Mr. Flumenbaum,
8 you are asserting the privilege with respect to a
9 matter as to which there is no confidential status.

10 MR. FLUMENBAUM: Well, if you
11 know the answer to your question, then ask him
12 questions for the record that you want to establish
13 here. He is an attorney for Brown & Williamson, his
14 information is derived primarily from people that he
15 gives legal advice to, and any knowledge that he has
16 that he obtains from functioning as an attorney you
17 are not permitted to go into today.

18 MR. HOGELAND: Well, if it's not
19 confidential information, I completely disagree with
20 your statement of law, and I'll press for an answer. I
21 frequently ask questions that I know the answer to in
22 depositions; so do you.

23 MR. FLUMENBAUM: But you are
24 here with an attorney, and I think you have to be more
25 precise and get directly to the point you want to

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Freedman

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1 make, and, you know, I don't see any reason to allow
2 Mr. Freedman -- Mr. Freedman is not here to tell you
3 what's in the public record and what's not in the
4 public record. And to the extent that any of your
5 questions need to be answered through information that
6 you could have obtained through and did obtain through
7 confidential communications, I'm not going to permit
8 him to answer. You don't need Mr. Freedman for that
9 information.

10 MR. HOGELAND: I submit to you
11 that information he obtains which is and is intended
12 to be disclosed to other persons is not confidential
13 information. And the mere fact that he is an attorney
14 does not prohibit -- does not give rise to a right to
15 deny Liggett to discovery we are seeking.

16 MR. FLUMENBAUM: We are not
17 denying you the right to seek discovery. You've
18 noticed at least 20 witnesses from Brown & Williamson,
19 and you can obtain whatever discovery is legitimate
20 through those witnesses. You do not need Mr. Freedman
21 here to answer those questions.

22 MR. HOGELAND: Liggett has
23 noticed Mr. Freedman's deposition and has a right to
24 take Mr. Freedman's deposition.

25 MR. FLUMENBAUM: And I have a

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Freedman

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1 right to object on the grounds of attorney-client
2 privilege.

3 MR. HOGELAND: You do object on
4 the grounds of attorney-client privilege, and we'll
5 have to find out whether you have a right to.

6 Could you mark this, please, as
7 Freedman Exhibit 1?

8 (Document No. 13073 through 13078 were marked
9 Freedman Deposition Exhibit 1, for
10 identification, copies of which are attached
11 hereto and made a part hereof.)

12 MR. FLUMENBAUM: Do you have a
13 copy of that exhibit?

14 MR. HOGELAND: No. As you know
15 we are in severe limitations of the number of copies
16 of documents that we have marked confidential that we
17 can make.

18 MR. BARKER: I believe the
19 practice in prior depositions is to read the copy
20 that's been marked.

21 MR. HOGELAND: I have asked the
22 reporter to mark as Freedman Exhibit 1 a document
23 bearing B&W Bate numbers 13073 through 13078.

24 MR. FLUMENBAUM: Since we are
25 marking confidential documents in the deposition, I'm

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Freedman

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1 going to designate the entire deposition transcript as
2 confidential, of Mr. Freedman.

3 Q. Mr. Freedman, I show you the
4 document marked Freedman Exhibit 1, and ask you if you
5 can identify it.

6 MR. FLUMENBAUM: Look through
7 the whole document, please.

8 A. I can identify the June 21st
9 transmittal memo from me to my various clients, and it
10 attaches a document issued under the name of L. W.
11 Butler, Vice President of Sales.

12 Q. Your memorandum is addressed to
13 Mr. Butler, is it not?

14 A. Yes.

15 Q. And your memorandum states on
16 its face that it is attaching the document you refer
17 to from L. W. Butler; is that correct?

18 MR. FLUMENBAUM: Objection as to
19 form. The document says attached is a notice which
20 you are free to disseminate to our managers. It
21 doesn't specify the Butler document, although the
22 Butler document is next to it in numbers.

23 MR. HOGELAND: And was produced
24 attached to it.

25 MR. FLUMENBAUM: As I look at

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1 the document, it's quite possible that the cover
2 page -- the attachment was produced in error, since
3 it's a clearly privileged communication between Mr.
4 Freedman and Mr. Butler.

5 MR. HOGELAND: You'll notice
6 that something has been redacted.

7 MR. FLUMENBAUM: Yes, I know.

8 MR. HOGELAND: I assume that
9 that is privileged. If we ever had a privilege law
10 from you we'd know.

11 MR. FLUMENBAUM: It's possible
12 that the whole thing should have been redacted, but I
13 guess --

14 MR. HOGELAND: It wasn't.

15 MR. FLUMENBAUM: -- in an
16 attempt to be cooperative, we gave you the documents,
17 and we gave you the cover sheet from Mr. Freedman.

18 What is your next question?

19 Q. Do you recognize the attach-
20 ment, Mr. Freedman?

21 MR. FLUMENBAUM: Have you ever
22 seen it before?

23 A. Yes.

24 Q. Did you create it?

25 MR. FLUMENBAUM: Objection.

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1 What do you mean?

2 Q. Did you draft it?

3 A. I did not draft it.

4 Q. Did you work on it in any way
5 and make any input into it?

6 MR. FLUMENBAUM: I'm going to
7 object that you are asking for work product and
8 attorney-client privilege. We've produced --

9 MR. HOGELAND: There is nothing
10 confidential about it, it's been produced.

11 MR. FLUMENBAUM: It's been
12 produced, but what his role in terms of the document
13 that's been produced, that's what you are asking him
14 now, and I don't think that's appropriate. The
15 document itself has been produced because it was sent
16 by Mr. Butler to various field managers.

17 MR. HOGELAND: Are you
18 testifying that it was?

19 MR. FLUMENBAUM: That's what the
20 document seems to -- you'll have to ask Mr. Butler for
21 sure. But whether Mr. Freedman had any input in that
22 document and prepared it is work product and attorney-
23 client.

24 Q. Mr. Freedman, do you know if
25 this document was sent out by Mr. Butler?

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Freedman

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1 MR. FLUMENBAUM: That particular
2 question. The document is stamped confidential. The
3 document itself speaks for itself. You are not going
4 to get Mr. Freedman to comment on that document at
5 this deposition if that's what --

6 MR. HOGELAND: You are going to
7 instruct him to answer no questions with respect to
8 this document; is that correct?

9 MR. FLUMENBAUM: I'm going to
10 instruct him not to tell you what his legal opinion is
11 of these documents.

12 MR. HOGELAND: I haven't asked
13 him that. I don't intend to.

14 MR. FLUMENBAUM: Or what advice
15 he gave to Mr. Butler or anything else relating to
16 that. You've noticed Mr. Butler's deposition, you can
17 ask Mr. Butler questions about the document, if you
18 like, but not Mr. Freedman.

19 MR. HOGELAND: I have not asked
20 Mr. Freedman any questions about --

21 MR. FLUMENBAUM: You asked him
22 if the document is confidential. I don't know what
23 you mean by confidential. It's stamped confidential.
24 So in that sense it's confidential. The document was
25 to be passed within Brown & Williamson --

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1 MR. HOGELAND: I'll press for
2 answers to my questions. The document has been
3 produced in this litigation.

4 MR. FLUMENBAUM: That's right.

5 MR. HOGELAND: Would you mark
6 this as Freedman Deposition Exhibit 2, please?

7 (The Document Nos. 14705 through 14710
8 were marked Freedman Exhibit 2, for
9 identification, copies of which are attached
10 hereto and made a part hereof.)

11 Q. Mr. Freedman, I've asked Miss
12 Tannenbaum to mark as Freedman Exhibit 2 a document
13 bearing B&W Bate numbers 14705 through 14710, and I
14 ask you if you have seen that document before?

15 A. Yes, I have.

16 Q. Did you prepare the document
17 attached to your -- to the first page of Freedman
18 Exhibit 2?

19 MR. FLUMENBAUM: Objection. You
20 are asking for work product and attorney-client
21 privilege.

22 MR. HOGELAND: If the answer is
23 no, you'll let him answer as you did with the previous
24 one, but this one you won't let him answer?

25 MR. FLUMENBAUM: No. I probably

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1 shouldn't have let him answer the other one. And as
2 you know, you should not make any assumption as to
3 what -- as to whether an assertion of attorney-client
4 privilege does not mean that --

5 MR. HOGELAND: That's why I was
6 asking the question because you didn't assert it when
7 the answer was no.

8 MR. FLUMENBAUM: Well, as I
9 said, I may have made a mistake, Mr. Hogeland. The
10 assertion of the privilege does not necessarily mean
11 that the answer is one way or another. It just is an
12 assertion of privilege, and I think --

13 MR. HOGELAND: And it's a
14 discretion not to answer.

15 MR. FLUMENBAUM: Yes.

16 MR. HOGELAND: I assume, Mr.
17 Flumenbaum, you are instructing him not to answer any
18 other questions about this document?

19 MR. FLUMENBAUM: It depends what
20 the questions are.

21 MR. HOGELAND: You want me to go
22 through them all?

23 BY MR. HOGELAND:

24 Q. Mr. Freedman, did you receive
25 any questions as a result of your sending Freedman

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1 Exhibit 2?

2 MR. FLUMENBAUM: Attorney-client
3 privilege. Instruct you not to answer. By the way,
4 when I use the term attorney-client privilege, I'm
5 also including the work product privilege.

6 MR. HOGELAND: I think if you
7 want both, you better say both.

8 MR. FLUMENBAUM: All right.
9 Attorney-client privilege, work product privilege.

10 Q. Mr. Freedman, before sending the
11 document which is attached to the internal correspond-
12 ence form being the first page of Exhibit 2, did you
13 discuss the contents of the attachment with anyone?

14 MR. FLUMENBAUM: Objection.
15 Attorney-client privilege. Work product privilege.

16 Q. Did you discuss the contents of
17 the attachment which is part of Freedman Exhibit 2,
18 with anyone outside Brown & Williamson?

19 MR. FLUMENBAUM: Other than
20 possibly lawyers for Brown & Williamson?

21 MR. HOGELAND: The question is
22 with anyone.

23 MR. FLUMENBAUM: No, no, no.
24 With respect to your question as to anyone, I've told
25 him I'm asserting the privilege. Now you've asked the

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1 questions outside of Brown & Williamson --

2 MR. HOGELAND: Yes.

3 MR. FLUMENBAUM: -- but it's un-
4 clear to me whether you are excluding lawyers from
5 Brown & Williamson in that question or not. Outside
6 of Brown & Williamson. You want to clarify the
7 question?

8 Q. The question is quite clear.
9 Anyone outside of Brown & Williamson. Answer it yes
10 or no.

11 MR. FLUMENBAUM: Including
12 outside lawyers.

13 MR. HOGELAND: Anyone.

14 MR. FLUMENBAUM: Then I instruct
15 him not to answer that on that basis.

16 Q. Did you discuss the attachment,
17 which is part of Freedman Exhibit 2, with anyone other
18 than an employee or lawyer retained by Brown &
19 Williamson?

20 A. Not that I recall.

21 Q. Your best recollection is that
22 you did not; is that correct?

23 MR. FLUMENBAUM: Objection.
24 He's answered your question.

25 MR. HOGELAND: Are you instruct-

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1 ing him not answer that?

2 MR. FLUMENBAUM: Yes. It's a
3 rhetorical argumentative question.

4 MR. HOGELAND: I'm asking for
5 his best recollection.

6 MR. FLUMENBAUM: He gave it to
7 you. He said not that I recall. Rephrasing his
8 question will not --

9 MR. HOGELAND: Are you in-
10 structing him not to answer?

11 MR. FLUMENBAUM: Your question,
12 yes, as worded, yes; no basis for that.

13 MR. HOGELAND: You are de-
14 priving Liggett of discovery, and you know it.

15 MR. FLUMENBAUM: No, I'm not.

16 MR. HOGELAND: Yes, you are.

17 MR. FLUMENBAUM: He's answered
18 your question.

19 MR. HOGELAND: I'm in discovery,
20 Mr. Flumenbaum.

21 Q. Mr. Freedman, who is Larry Amos?

22 A. Larry Amos is senior attorney at
23 Brown & Williamson in the law department.

24 Q. Does he report to you?

25 A. Yes.

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1 MR. HOGELAND: Mark this as
2 Freedman Exhibit 3, please.

3 (The letter of November 4, 1985 and
4 attachments were marked Freedman
5 Deposition Exhibit 3, for identification,
6 copies of which are attached hereto and
7 made a part hereof.)

8 Q. Mr. Freedman --

9 MR. FLUMENBAUM: One minute,
10 please.

11 Q. Mr. Freedman, I have asked Miss
12 Tannenbaum to mark as Freedman Exhibit 3 documents
13 bearing B&W Bate number 12645 through 12649. I show
14 you Freedman Exhibit 3, and ask you if you have seen
15 it before.

16 MR. FLUMENBAUM: Look through
17 all of it.

18 It's my recollection, Mr.
19 Hogeland, that this deposition that you've marked as
20 Exhibit 3 was not produced stapled together, but we
21 can double-check that when we get back to New York.

22 MR. HOGELAND: The Bate numbers
23 are clear, and we are calling them Freedman 3.

24 MR. FLUMENBAUM: You can call
25 any number --

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1 MR. HOGELAND: Let me finish.

2 MR. FLUMENBAUM: -- any
3 documents Exhibit 3, but I'm -- so the record is
4 clear, I don't believe that these documents were
5 together, and --

6 MR. HOGELAND: So the record is
7 clear, we received them together, but it doesn't
8 matter. They are your documents.

9 MR. FLUMENBAUM: They are
10 documents, but I'm just suggesting to you that it is
11 not a single unitary document.

12 What's the question with respect
13 to Freedman Exhibit 3?

14 MR. HOGELAND: Would you read
15 the question, please?

16 (The Court Reporter read the record.)

17 A. Would you please ask me without
18 using the words seen it?

19 Q. Due to Mr. Flumenbaum's
20 statement, I will. Have you seen any part of it
21 before?

22 A. Yes.

23 Q. Can you identify the parts that
24 you have seen before?

25 A. I have seen those pages marked

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1 on 0012645, 12646 and 12647. I have never seen 648 or
2 649 to the best of my knowledge.

3 Q. Are you familiar with Mr. Amos'
4 handwriting?

5 A. Yes.

6 Q. Do you recognize the handwriting
7 on the portions of Freedman 3 which you have not seen
8 before?

9 A. No, I don't.

10 Q. Are you able to identify it as
11 not Mr. Amos' handwriting? That's unfair. It does
12 not appear to you --

13 A. I don't want to speculate.

14 Q. Okay. You are familiar with his
15 handwriting?

16 A. Yes.

17 Q. And you don't recognize the
18 handwriting on these two pages; is that correct?

19 MR. FLUMENBAUM: You have to
20 answer yes.

21 THE WITNESS: I thought I did.

22 A. I don't recognize the
23 handwriting.

24 Q. As being either Mr. Amos' hand
25 or --

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1 A. I'm not able to testify that
2 it's not Mr. Amos' --
3 Q. Or anybody else?
4 A. -- or anybody else.
5 Q. You can testify it's not yours?
6 A. I can testify to that.
7 Q. Are you familiar with the
8 subject matter of Mr. Amos' letter which he sent to
9 Mr. Jarzabek, which is the first two pages of Freedman
10 Exhibit 3?

11 MR. FLUMENBAUM: I'll let him
12 answer that question, but -- I'll let him answer
13 without waiving -- on the agreement that his answer
14 will not waive the attorney-client privilege as to any
15 substantive question because of the breadth of that
16 question.

17 MR. HOGELAND: Without
18 committing myself, you won't make a mistake, Mr.
19 Flumenbaum, I don't think there is much danger that
20 you are going to waive anything today.

21 MR. FLUMENBAUM: It's not my
22 intention to waive anything. I'll let him answer
23 that. I just want it understood I'll let him answer
24 that, but I'm not doing that on the theory that I'm
25 going to allow him to waive it.

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1 A. I knew that Mr. Jarzabek had
2 contacted me several times to get some information
3 about the generic pricing structure in general. I was
4 unable to return the calls, and I asked Mr. Amos to
5 get with him, see what he wanted and reply.

6 Q. What were the nature of the
7 questions Mr. Jarzabek addressed to you?

8 MR. FLUMENBAUM: Do you want to
9 first ask him if he talked to Mr. Jarzabek? There is
10 an assumption -- there is gap between his answer and
11 your question.

12 Q. Now, how did Mr. Jarzabek
13 communicate with you?

14 MR. FLUMENBAUM: There is still
15 a gap between -- he said that -- I believe what Mr.
16 Freedman just said was that he received messages from
17 Mr. Jarzabek, and he asked Mr. Amos to return Mr.
18 Jarzabek's call. That's what I understood his answer
19 to be. If you want to ask him if he actually talked to
20 Mr. Jarzabek --

21 Q. In what form did you receive the
22 messages from Mr. Jarzabek?

23 A. Telephone messages from my
24 secretary.

25 Q. And you did not return any of

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1 those calls?

2 A. No, sir.

3 Q. And you asked Mr. Amos to?

4 A. Yes.

5 Q. So you never communicated with
6 Mr. Jarzabek?

7 A. To the best of my --

8 Q. On this subject.

9 A. To the best of my recollection I
10 never did speak to Mr. Jarzabek.

11 Q. Did you conduct the inquiry or
12 participate in the inquiry that is reported -- the
13 results of which are reported by Mr. Amos to Mr.
14 Jarzabek in the first two pages of Freedman Exhibit 3?

15 MR. FLUMENBAUM: I'm going to
16 object as to form and to the extent that there is a
17 substantive answer there that I believe would be
18 covered by attorney-client and work product privilege.
19 The only thing that is not privileged would be the
20 communication to the third party, and that you have,
21 which is the letter that's now been marked as the
22 first three pages of Freedman 3.

23 Q. The inquiry that was conducted
24 by Mr. Amos or reported on by Mr. Amos was undertaken
25 with the -- for the purpose of reporting to Mr.

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1 Jarzabek; is that correct, Mr. Freedman?

2 MR. FLUMENBAUM: I'm going to
3 object as to form. You are asking Mr. Freedman to --
4 first, the question relates to Mr. Amos' state of
5 mind, and Mr. Freedman can't respond to that.

6 Second, you have the communi-
7 cation that's not privileged. I think any communi-
8 cation between Mr. Freedman and Mr. Amos would be
9 privileged as well, and, therefore, I think your
10 question violates the attorney-client, work product
11 privileges.

12 MR. HOGELAND: You are
13 instructing him not to answer?

14 MR. FLUMENBAUM: The way the
15 question is worded, yes.

16 Q. Reserving your objections to
17 form, you are instructing him not to answer; is that
18 correct?

19 MR. FLUMENBAUM: Yes, even
20 reserving that because I --

21 MR. HOGELAND: That's all I want
22 to know.

23 Q. Mr. Freedman, have you had any
24 communications with any representative of the
25 International Tobacco Wholesale Alliance Limited, USA?

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1 A. Would you repeat the question,
2 please?

3 (Whereupon the Court Reporter read the
4 record.)

5 A. Not that I can recall.

6 Q. Have you had any communications
7 with any representative of ITWAL?

8 MR. FLUMENBAUM: What's the
9 difference between that question and the one you just
10 asked?

11 MR. HOGELAND: Two ways of
12 referring to an entity. I just want to make sure the
13 witness doesn't recall a communication with any
14 representative of ITWAL.

15 MR. FLUMENBAUM: You may answer
16 that question. I thought that's what he asked you
17 already.

18 A. Not that I can recall.

19 MR. FLUMENBAUM: Abbreviation of
20 what Mr. Hogeland stated before.

21 Q. Mr. Freedman, have you prepared
22 or reviewed any documents or communications dis-
23 seminated by Brown & Williamson to its customers or
24 any of its customers regarding ITWAL?

25 MR. FLUMENBAUM: Objection. I

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1 think that calls for attorney-client and work product
2 information.

3 MR. HOGELAND: Are you
4 instructing the witness not answer?

5 MR. FLUMENBAUM: That particular
6 question as worded, yes.

7 MR. HOGELAND: Reserving any
8 objections to the wording of the question, are you
9 instructing the witness not to answer?

10 MR. FLUMENBAUM: I think that
11 question intrudes on the attorney-client and work
12 product relationship, and, therefore, as worded, I'm
13 instructing him not to answer your question.

14 Q. Do you know what ITWAL is, Mr.
15 Freedman?

16 MR. FLUMENBAUM: Mr. Hogeland,
17 Mr. Freedman's knowledge that he gains as a lawyer for
18 Brown & Williamson is (a), irrelevant to this lawsuit
19 and (b), is derived through confidential communications
20 with his clients. He has testified he has not had any
21 communications with ITWAL.

22 MR. HOGELAND: He doesn't
23 recall.

24 MR. FLUMENBAUM: That's right,
25 he doesn't recall -- no, he said he doesn't recall any

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1 communications with ITWAL. And, therefore, to the
2 extent that he has knowledge of ITWAL, it would have
3 to be through confidential communications, so,
4 therefore, on that assumption -- or in part derived
5 from confidential communications, so on that
6 assumption I cannot let him answer the question as
7 worded.

8 MR. HOGELAND: You are
9 instructing him not to answer the question?

10 MR. FLUMENBAUM: As to his own
11 personal knowledge. I think it's irrelevant what his
12 personal knowledge is, and I think to the extent that
13 he has any, it's obtained through confidential
14 communications.

15 MR. HOGELAND: We are having
16 discovery of Brown & Williamson through Mr. Freedman.
17 His personal knowledge is not irrelevant.

18 MR. FLUMENBAUM: Well, let me --
19 the only reasons you are having personal discovery
20 of Mr. -- discovery of Brown & Williamson through Mr.
21 Freedman is because you noticed Mr. Freedman. Mr.
22 Freedman should not have been noticed; he's an
23 attorney.

24 And, therefore, you can obtain
25 the same information through nonprivileged means, and

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1 you elected not to do that, and that was your
2 decision, it was I believe an inappropriate decision,
3 and I don't think you should try to imply that Brown &
4 Williamson is foreclosing your discovery. You will
5 have many of the other witnesses at Brown & Williamson
6 that you have noticed, and you can ask the same
7 questions to them. And, therefore, there will be no
8 way that privileged communications could enter into an
9 answer. Mr. Freedman's knowledge is irrelevant.

10 MR. HOGELAND: Mr. Freedman's
11 knowledge is not irrelevant. I will not agree with
12 that, and I will press for an answer to that question.
13 Mr. Freedman is here pursuant to notice.

14 MR. FLUMENBAUM: And I've
15 instructed --

16 MR. HOGELAND: He is informed
17 and as articulate and as intelligent a witness as
18 Brown & Williamson could possibly ever produce, and we
19 are going to press for answers.

20 MR. FLUMENBAUM: Fine, you can
21 press, but he's an attorney, and, therefore, the
22 privilege applies.

23 MR. HOGELAND: Of course, there
24 are privileges that apply. Not to this question. His
25 knowledge is not immunized from discovery.

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1 MR. FLUMENBAUM: His knowledge
2 to the extent that it's based on information that he
3 derives from attorney-client communications is
4 covered.

5 MR. HOGELAND: I'm not going to
6 argue the privilege law.

7 MR. FLUMENBAUM: Fine.

8 Q. Did you have any communications
9 regarding ITWAL with anyone outside Brown &
10 Williamson?

11 MR. FLUMENBAUM: Are you
12 excluding possibly attorneys for Brown & Williamson?

13 Q. Excluding attorneys for Brown &
14 & Williamson.

15 A. Not to my knowledge.

16 Q. Do you sometimes communicate
17 with customers of Brown & Williamson?

18 MR. FLUMENBAUM: About ITWAL?

19 Q. About anything.

20 A. Yes.

21 Q. You have no recollection of any
22 communication with a customer of Brown & Williamson
23 concerning ITWAL?

24 A. I have no recollection of
25 discussing ITWAL with anybody outside of Brown &

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1 Williamson.

2 MR. FLUMENBAUM: Or its
3 attorneys?

4 A. Or its attorneys.

5 MR. HOGELAND: Let's take a
6 break.

7 MR. FLUMENBAUM: Just so the
8 record is clear, Mr. Freedman will be here till noon.
9 You can take --

10 MR. HOGELAND: Obviously we are
11 not going to get any discovery from him, anyway.

12 MR. FLUMENBAUM: You can take
13 whatever breaks you like, but Mr. Freedman --

14 MR. HOGELAND: We will spend all
15 day listening to your speeches, anyway, so it doesn't
16 matter. Don't have many answers.

17 MR. FLUMENBAUM: How long a
18 break would you like, Mr. Hogeland?

19 MR. HOGELAND: Ten minutes.

20 MR. FLUMENBAUM: Fine.

21 (A short recess was taken.)

22 Q. Mr. Freedman, I'm showing you
23 what has been previously marked as Stephens
24 Exhibit 3 -- wait a minute, wrong one. Where did it
25 go? I'm sorry, Stephens Exhibit 8. To save you time,

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1 pages within that exhibit identified as B&W Bate 12352
2 and 12353 are the only pages.

3 MR. FLUMENBAUM: Would you
4 repeat that again, please? I'm sorry.

5 MR. HOGELAND: Yes, 12352 and
6 12353 are the only pages that I would ask Mr. Freedman
7 to look at. He's free to look at all of it,
8 obviously.

9 MR. FLUMENBAUM: Okay. Take a
10 look at these two pages.

11 Do you have another copy so that
12 I can read it?

13 MR. HOGELAND: Yes.

14 Q. Mr. Freedman, calling your
15 attention to Bate 12352 and 12353, which are a part of
16 Stephens Exhibit 8, have you seen that memorandum
17 represented by those two pages before?

18 MR. FLUMENBAUM: I'm going to
19 object. I don't think you are entitled to ask an
20 attorney what documents he's seen in connection with
21 his performance of legal duties because then it's --
22 in his performance of his legal duties.

23 MR. HOGELAND: Are you in-
24 structing him not to answer?

25 MR. FLUMENBAUM: Yes, because I

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1 think --

2 MR. HOGELAND: All right, you
3 are instructing him not to answer, you don't need to
4 go further.

5 MR. FLUMENBAUM: All right,
6 fine.

7 Q. Calling your attention to
8 document 12352 or Bate 12352 which is part of Stephens
9 Exhibit 8, do you recognize the handwriting in the
10 upper right hand corner?

11 A. Yes, I do.

12 Q. Whose is it?

13 A. It's Larry Amos'.

14 Q. And do you recognize the stamp
15 in the upper -- near the upper right hand corner?

16 A. If you tell me what the stamp
17 says before I answer yes or no, so there is no
18 confusion.

19 Q. The thing that says -- the
20 writing on there that says received September 10,
21 1984, BHF, do you recognize that?

22 A. Yes, I do.

23 Q. What does that mean?

24 A. It means that my secretary
25 received the document from my in-box and stamped it

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1 such on September 10th.

2 Q. What happens to the documents
3 that go into your in-box?

4 MR. FLUMENBAUM: Ordinarily or
5 not -- in connection with this particular document?

6 Q. What typically happens to
7 documents that leave your in-box?

8 MR. FLUMENBAUM: You can answer
9 that if there is a typical pattern.

10 A. They sit on my desk until I
11 either read them, toss them, file them, miss them.

12 Q. If you read it, do you have a
13 standard way of indicating that you have read it,
14 typically?

15 A. No. Let me correct that answer.
16 I do something that is not for the purpose of
17 indicating I read it, but I do it all the time to
18 indicate, and it would indicate that I read it, and
19 that is I give my secretary filing instructions on the
20 page.

21 Q. What if filing instructions were
22 already there?

23 A. I give her my own.

24 Q. You and Mr. Amos have separate
25 filing systems?

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1 A. In many sections we do. Even if
2 we share a file, both of our notations will be in
3 there, and you'll find duplicate copies of the same
4 document.

5 Q. Well, does the handwriting in
6 the upper right hand corner of Bate 12352 indicate
7 that the same document was to go first to BHF and then
8 to a file?

9 A. That's what that would indicate.
10 If this were a copy that I would typically see, you'd
11 see a slash from me indicating that I've now seen it,
12 pass it on to the file, do whatever.

13 MR. FLUMENBAUM: Do you have any
14 more questions?

15 MR. HOGELAND: Yes, of course.
16 I don't want to waste time asking questions that you
17 are going to instruct him not to answer; questions
18 that he should answer.

19 MR. HOGELAND: Would you mark
20 that as Freedman Exhibit whatever it is, 4?

21 (The document entitled Heartland Agreement
22 was marked Freedman Deposition Exhibit 4,
23 for identification, a copy of which is
24 attached hereto and made a part hereof.)

25 Q. Mr. Freedman, I'm going to show

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1 you what has been marked as Freedman Exhibit 4 which
2 is identified as Heartland Agreement number 924, bears
3 a B&W Bate number, the last three digits of which are
4 543.

5 MR. FLUMENBAUM: You can't make
6 it out?

7 Q. I ask you, Mr. Freedman, what is
8 that document?

9 MR. FLUMENBAUM: Why are you
10 asking Mr. Freedman that? The document speaks for
11 itself.

12 MR. HOGELAND: I want to know
13 his answer.

14 MR. FLUMENBAUM: The document
15 speaks for itself.

16 MR. HOGELAND: Documents don't
17 speak for themselves.

18 MR. FLUMENBAUM: Of course they
19 do.

20 MR. HOGELAND: This is
21 discovery. I want the witness to tell me what it is.
22 Simple question.

23 MR. FLUMENBAUM: Wait a second.
24 It is an agreement.

25 MR. HOGELAND: I'm not asking

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1 you to testify, I'm asking this witness to testify.

2 MR. FLUMENBAUM: Well, I'm --

3 MR. HOGELAND: I don't want your

4 answers.

5 MR. FLUMENBAUM: I'm going to

6 limit him his testimony as to what the --

7 MR. HOGELAND: You are trying

8 to limit what Liggett is entitled to. I understand

9 that. I'm asking this witness a question. It's a
10 very simple question.

11 MR. FLUMENBAUM: I'm going to

12 let you answer that question. I want you to limit

13 your answer to the agreement itself and not

14 characterize it or discuss anything outside the
15 document itself.

16 A. It's a document that is titled
17 Heartland Agreement. You don't want me to read it, do
18 you?

19 Q. Of course not. I'm asking you a
20 simple question, what is it.

21 MR. FLUMENBAUM: Who are the
22 parties?

23 A. It appears to be signed by L. W.
24 Butler and on behalf of a distributor named
25 Independent Grocers, Inc.

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1 MR. FLUMENBAUM: Does it have a
2 date?

3 A. It has an effective date of June
4 26, 1984.

5 Q. In the upper right hand corner
6 it is identified as Plan B; is that correct?

7 A. The document says Plan B.

8 Q. What is Plan B?

9 MR. FLUMENBAUM: Objection.
10 Instruct him not to --

11 MR. HOGELAND: Are you
12 instructing him not to answer?

13 MR. FLUMENBAUM: Of course. If
14 you want to ask him if he had any communications with
15 Independent Grocers about this document --

16 MR. HOGELAND: I don't intend to
17 ask him that. I've asked him the questions I've asked
18 him, and you've instructed him not to answer.

19 MR. FLUMENBAUM: Okay. I just
20 want the record to be clear that I'm not going to let
21 you ask him questions that relate to internal
22 communications with Brown & Williamson. If you want
23 to ask him about this agreements with any third party
24 outside Brown & Williamson --

25 MR. HOGELAND: I've asked him

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1 what Plan B was. You instructed him not to answer.

2 MR. FLUMENBAUM: Because that
3 would entail communications that he may have received
4 through Brown & Williamson.

5 Q. Do you have any knowledge of any
6 communications by Brown & Williamson personnel to
7 customers of Brown & Williamson concerning Plan B?

8 MR. FLUMENBAUM: Objection as to
9 the form of that.

10 MR. HOGELAND: That's all right.
11 He can answer it.

12 MR. FLUMENBAUM: Can you answer
13 it yes or no?

14 A. I guess I better hear the
15 question.

16 (Whereupon the Court Reporter read the
17 record.)

18 MR. FLUMENBAUM: To the extent
19 that he received any of those -- any of that knowledge
20 through communications with Brown & Williamson, then
21 you are asking for attorney-client and work product.

22 MR. HOGELAND: I disagree with
23 you. Are you instructing him not to answer?

24 MR. FLUMENBAUM: I'll let him
25 answer to the extent whether he was -- whether he has

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1 knowledge of communications with third parties that
2 were made -- relating to this which were made in his
3 presence.

4 MR. HOGELAND: You will what?

5 MR. FLUMENBAUM: I will allow
6 him to answer a question that's limited to whether he
7 was present or heard discussions to a third party such
8 as Independent Grocers, about Plan B. But I will not
9 let you ask him about any internal discussions about
10 Plan B. You'll be able to ask the appropriate Brown &
11 Williamson --

12 MR. HOGELAND: There is a
13 pending question. Would you read the question,
14 please?

15 MR. FLUMENBAUM: I'm not going
16 to let him answer that question because I think --

17 MR. HOGELAND: Are you going to
18 instruct him not to answer the pending question? I'm
19 going to go for an answer.

20 MR. FLUMENBAUM: As worded. As
21 worded.

22 MR. HOGELAND: Will you mark
23 this, please, as Exhibit 5?

24 (The Field Sales Notice was marked
25 Freedman Deposition Exhibit 5, for

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1 identification, copies of which are attached
2 hereto and made a part hereof.)

3 Q. Mr. Freedman, I show you a
4 document that is marked Freedman Exhibit 5 bearing B&W
5 Bate 528 through 553, and I ask you, calling your
6 attention only to the first page, whether you have
7 seen it before?

8 MR. FLUMENBAUM: Has he seen the
9 first page before?

10 MR. HOGELAND: Yes.

11 A. I have seen 0528 before.

12 Q. What is it?

13 A. It appears to be a field sales
14 notice issued by B&W to its field managers except for
15 special markets. It talks about Heartland Agree-
16 ments.

17 Q. I call your attention to the
18 last paragraph of the first page of Freedman Exhibit 5
19 in which field managers are invited to ask -- to
20 consult with you if they have any questions. Is that
21 an invitation for the field managers to ask your legal
22 advice?

23 MR. FLUMENBAUM: Objection as to
24 form, but --

25 A. They are being told to call me

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Freedman

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1 for legal advice. They all know I'm a lawyer.

2 Q. Were they told to call Mr.
3 Christensen or you if they had any questions?

4 MR. FLUMENBAUM: Objection. The
5 documents speaks for itself.

6 MR. HOGELAND: This is
7 discovery.

8 MR. FLUMENBAUM: You are mis-
9 characterizing the document in your question. I'm
10 not --

11 Q. Would you read the last
12 paragraph into the record, please, Mr. Freedman?

13 A. "If you have already completed
14 any contracts" --

15 Q. I'm sorry, go ahead.

16 A. -- "Contact Don Christensen or
17 Bart Freedman for instructions."

18 Q. All right. And you are telling
19 me that that is to invite them to consult you for
20 legal advice?

21 MR. FLUMENBAUM: He's already
22 answered that. He would just be repeating his answer.

23 MR. HOGELAND: He can answer it
24 again.

25 MR. FLUMENBAUM: No, he can't.

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Freedman

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1 MR. HOGELAND: Yes, he can.

2 MR. FLUMENBAUM: No. He

3 shouldn't.

4 MR. HOGELAND: I want it

5 answered.

6 MR. FLUMENBAUM: He just

7 answered. It's been asked and answered.

8 MR. HOGELAND: I'm asking it

9 again.

10 MR. FLUMENBAUM: Why?

11 MR. HOGELAND: Because I want

12 his answer again. It's my discovery. I want his

13 answer.

14 MR. FLUMENBAUM: You are not

15 going to ask him the same question twice.

16 MR. HOGELAND: Yes, I am.

17 Q. Will you answer the question,
18 please?

19 MR. FLUMENBAUM: Don't answer
20 the question.

21 Q. Let me have the exhibit.

22 MR. FLUMENBAUM: He's answered
23 it.

24 Q. Mr. Freedman, do you know what
25 Plan A and Plan B are or were as referred to in

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1 Freedman Exhibit 5?

2 MR. FLUMENBAUM: I'm going to
3 let you answer the question just either yes or no
4 whether you know what this refers to, but again it's
5 without waiver of any attempt to elicit any sub-
6 stantive information about those plans.

7 A. At the present time I don't
8 remember, to be very honest with you.

9 Q. Did you in or about the 6th of
10 June, 1984 know the difference?

11 A. Yes.

12 Q. Do you know today the difference
13 between Plan 1 and Plan 2?

14 A. I have the same problem, I don't
15 remember.

16 Q. Did you know the difference on
17 or about the 6th of June, 1984?

18 A. Yes.

19 Q. Do you know why the change was
20 made from Plans A and B to Plans 1 and 2?

21 MR. HOGELAND: Or I may have
22 that backwards.

23 MR. FLUMENBAUM: I'm going to
24 instruct him not to answer.

25 MR. HOGELAND: On the grounds of

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1 privilege?

2 MR. FLUMENBAUM: And I'm also
3 objecting to the form of the question.

4 MR. HOGELAND: The form of the
5 question is bad.

6 Q. Was there a change made from the
7 uses of Plans A and B to the use of Plans 1 and 2?

8 MR. FLUMENBAUM: The document
9 that you've marked --

10 MR. HOGELAND: I'm asking the
11 witness a question.

12 MR. FLUMENBAUM: The only way he
13 knows is because of his rendering of legal advice to
14 his clients.

15 MR. HOGELAND: You are saying
16 that. He can say that if that's --

17 MR. FLUMENBAUM: He's testified
18 the only record that you have here is that he is a
19 lawyer and he's consulted for legal advice, that's the
20 record that we have here, and I don't see any reason
21 for you to try to get substantive testimony from him.
22 It's improper, you are going to have witnesses.

23 MR. HOGELAND: I asked him if he
24 knows. He can answer that yes or no.

25 MR. FLUMENBAUM: Well --

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Freedman

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1 MR. HOGELAND: You've instructed
2 him not to answer the question that is yes or no, do
3 you know. If the answer is I don't know, there is no
4 point in my pressing for answers, is there? It's a
5 perfectly proper question.

6 MR. FLUMENBAUM: I'll let you do
7 it this time, but I don't think it's proper.

8 MR. HOGELAND: Thank you. It's
9 clearly proper.

10 MR. FLUMENBAUM: I don't think
11 so.

12 THE WITNESS: Please reread the
13 question.

14 MR. HOGELAND: If you can find
15 it.

16 (Whereupon the Court Reporter read the
17 record.)

18 MR. HOGELAND: Let me rephrase
19 the question.

20 Q. Do you know if in June of 1984
21 or thereabouts, thenabouts, a change was made from the
22 uses of Plans A and B to the use of Plans 1 and 2?

23 A. I have no recollection of what
24 the heck was going on with these plans at the time for
25 the letter changes. I have no present memory of it.

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1 Q. And nothing on the first page of
2 Freedman Exhibit 5 refreshes your recollection; is
3 that correct?

4 A. It refreshes my recollection
5 that people were fussing around with plan names at the
6 time. I don't recall the substance.

7 Q. But you do recall with your
8 recollection thus refreshed that a change was made?

9 MR. FLUMENBAUM: I think he's
10 answered your question. The document speaks for
11 itself.

12 MR. HOGELAND: His recollection
13 is not on the document.

14 MR. FLUMENBAUM: He just told
15 you what his recollection was and how it was refreshed
16 by your document.

17 MR. HOGELAND: I want to know.

18 MR. FLUMENBAUM: What you are
19 trying to do is summarize his testimony.

20 MR. HOGELAND: I'm not trying to
21 summarize his testimony, I'm trying to get some
22 testimony from this witness.

23 MR. FLUMENBAUM: I think the
24 witness is answering all proper questions.

25 MR. HOGELAND: Are you

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Freedman

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1 instructing him not to answer?

2 MR. FLUMENBAUM: I think it's
3 asked and answered.

4 MR. HOGELAND: Are you
5 instructing him not to answer?

6 MR. FLUMENBAUM: No, he can
7 answer the question.

8 MR. HOGELAND: Thank you. Read
9 the question. It's your record.

10 (Whereupon the Court Reporter read the
11 record.)

12 A. I recall a lot of scurrying
13 around changing titles of plans about a year ago. I
14 have no recollection as to what the substance was, if
15 any, of those changes.

16 Q. Did you at the time know what
17 the substance of those changes was?

18 MR. FLUMENBAUM: If any. I
19 think that it's an improper question as to form. He
20 says he doesn't recall now whether there were any
21 changes except as to the names, so to ask him whether
22 at the time he knew doesn't really make any sense.

23 Q. Were you involved in the
24 scurrying around that was going on at that time,
25 changing titles?

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1 A. My legal advice would certainly
2 have been sought upon the nature of any changes that
3 they were proposing.

4 Q. And therefore you would have
5 been knowledgeable about the substance of any such
6 changes at that time.

7 MR. FLUMENBAUM: Objection as to
8 form. That's not his testimony.

9 MR. HOGELAND: I know what his
10 testimony is. I'm asking a conclusion.

11 MR. FLUMENBAUM: You asked a
12 therefore question.

13 MR. HOGELAND: Yes.

14 MR. FLUMENBAUM: Objectionable
15 as to form.

16 Q. You may answer.

17 MR. FLUMENBAUM: If you can.

18 A. If I reviewed the changes at the
19 time, I simply would have been knowledgeable of them
20 before I would have cleared it.

21 Q. You testified that your legal
22 advice was sought with respect to the substance of any
23 changes that were being made. If there were any
24 substantive changes made, you would have been
25 knowledgeable as to them; is that correct?

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1 MR. FLUMENBAUM: I think he's
2 answered this question several times now, and you are
3 just trying to rephrase it differently each time.
4 He's given you his best understanding, and I think the
5 record is clear --

6 MR. HOGELAND: Are you
7 instructing him not to answer?

8 MR. FLUMENBAUM: That last
9 question, yes, it's objectionable as to form, also.

10 MR. HOGELAND: You are
11 instructing him not to answer it?

12 MR. FLUMENBAUM: Yes.

13 MR. HOGELAND: On what grounds?

14 MR. FLUMENBAUM: On the grounds
15 of form, on the grounds that it's been asked and
16 answered, on the grounds that he's given you his
17 answer to that question, and I think we've had enough
18 on that one question.

19 MR. HOGELAND: And therefore on
20 those grounds you are instructing him not to answer?

21 MR. FLUMENBAUM: That question,
22 yes, he's answered it several times.

23 Q. Mr. Freedman, are you aware of
24 Brown & Williamson's direct account incentive program?

25 MR. FLUMENBAUM: I'll let you

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1 answer yes or no.

2 A. Yes.

3 Q. Have you had any communications
4 with anyone outside Brown & Williamson excluding
5 outside attorneys concerning Brown & Williamson's
6 direct account incentive program?

7 A. Not that I can remember.

8 Q. In the discharge of your duties
9 at Brown & Williamson, would it be typical for you to
10 have communications with customers of Brown &
11 Williamson regarding Brown & Williamson's direct
12 account incentive program?

13 MR. FLUMENBAUM: Objection as to
14 form.

15 A. No, it would not be typical for
16 me to have communications with customers about that
17 program.

18 Q. You testified that you do from
19 time to time have communications with customers of
20 Brown & Williamson; is that correct?

21 A. Yes.

22 Q. Is that a correct statement of
23 your prior testimony?

24 A. Yes.

25 Q. Can you tell me what the subject

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Freedman

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1 matters of those communications are?

2 MR. FLUMENBAUM: Let me talk to
3 him outside, consult with my client.

4 Let me hear the last question
5 again before we go out.

6 (Whereupon the Court Reporter read the
7 record.)

8 (Whereupon the deponent and his counsel left
9 the room.)

10 MR. FLUMENBAUM: You want to --

11 A. I'd like to hear the last
12 question.

13 (Whereupon the Court Reporter read the
14 record.)

15 A. The vast majority of my
16 communications with customers are in a social setting.
17 I represent the company at various customer trade
18 association conventions, and the subject matter of
19 those conventions when I would be talking with
20 customers is strictly social. It's almost an
21 unwritten rule we don't talk business at an operation
22 like that. Play golf, go sailing, eat too much.

23 Q. Do you have communications with
24 customers or potential customers of Brown & Williamson
25 either in the presence of other Brown & Williamson

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1 representatives or not in their presence on business
2 matters?

3 MR. FLUMENBAUM: Do you want to
4 narrow it down to some specific matters that are
5 relevant to this litigation?

6 MR. HOGELAND: I want to ask him
7 if he has any, and then we'll find out.

8 A. Rarely.

9 Q. Rarely. Do the customers of
10 Brown & Williamson ever call you with questions about
11 any Brown & Williamson business matter?

12 A. Very, very rarely.

13 Q. Occasionally it's happened?

14 MR. FLUMENBAUM: Very, very
15 rarely.

16 A. Not even occasionally. It's
17 very, very rarely.

18 Q. Are you familiar with Brown &
19 Williamson's credit terms for its generic cigarettes?

20 A. Yes.

21 Q. Have you ever had or partici-
22 pated in any communication with any customer or
23 potential customer of Brown & Williamson with respect
24 to credit terms?

25 A. I better ask you what you mean

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1 by "credit terms" before I answer that.

2 Q. Well, the terms on which
3 payments are due.

4 A. I don't remember.

5 Q. What are Brown & Williamson's
6 credit terms for generic cigarettes?

7 MR. FLUMENBAUM: I'm going to
8 instruct him not to answer.

9 MR. HOGELAND: On the grounds of
10 privilege?

11 MR. FLUMENBAUM: And work
12 product.

13 Q. Are you familiar with Brown &
14 Williamson's private label generic program?

15 MR. FLUMENBAUM: Objection as to
16 form. Answer the question as it's worded.

17 A. You are using the phrase that I
18 never use. I am familiar with Brown & Williamson's
19 private label program, and I am familiar with Brown &
20 Williamson's generic program.

21 Q. Thank you. Have you ever had or
22 participated in any communication with any customer or
23 potential customer of Brown & Williamson with respect
24 to Brown & Williamson's private label program?

25 A. May I hear the question back,

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1 please?

2 (Whereupon the Court Reporter read the
3 record.)

4 A. Yes.

5 Q. What customer or customers or
6 potential customers?

7 MR. FLUMENBAUM: I think you may
8 be getting into an area which is in connection with
9 ongoing negotiations which is highly proprietary and
10 trade secret, and I would let him answer any questions
11 that you have with respect to any completed contract
12 or negotiations, but I will not let him on the grounds
13 of proprietary information and trade secret information
14 let you know who Brown & Williamson has been in the
15 process of negotiating with today.

16 MR. HOGELAND: I want to know
17 the participations that he has had with third parties.
18 This deposition, you have already stated, is
19 confidential.

20 MR. FLUMENBAUM: Yes.

21 MR. HOGELAND: And there can be
22 no possible prejudice to Brown & Williamson.

23 MR. FLUMENBAUM: Yes, there can
24 be. Your clients are engaged in a great deal of anti-
25 competitive contact against Brown & Williamson, and

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1 this information is very sensitive, and I'm not going
2 to have Mr. Freedman discuss ongoing negotiations.

3 If you want to refer to any
4 specific contracts and to any specific completed
5 negotiation that he took part in, I have no objection
6 to do that. I will have no objection to him
7 discussing that. But I'm not going to let you use
8 this deposition to find out who Brown & Williamson is
9 negotiating with at this time. It's not relevant to
10 your lawsuit.

11 MR. HOGELAND: No. It may be
12 your position, but Brown & Williamson's private label
13 program is relevant to the issues and questions on
14 which we are now having discovery. And this witness's
15 knowledge of that program is something that Liggett is
16 entitled to discovery of.

17 MR. FLUMENBAUM: No, you are not
18 entitled to his knowledge of the program. The most you
19 are entitled to are his knowledge of communications
20 that are made to third parties in his presence in a
21 situation where he's not giving legal advice to such
22 third parties. And that's the most you are entitled
23 to.

24 And as I said, I'll let you ask
25 questions relating to such communications if it

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involves negotiations that have concluded, but I'm not
going to have -- I'm going to instruct him not to
answer any questions on negotiations that are ongoing
today or that are not yet completed.

Q. Mr. Freedman, the communi-
cations with customers or potential customers of Brown
Williamson private label cigarettes, which you had
in which you participated, when did they take
place?

MR. HOGELAND: I didn't ask who
was with.

MR. FLUMENBAUM: Well, I'm going
to let him answer. Again, I have an objection to this
line of questioning. I don't think it's relevant to
this lawsuit.

I'll let you answer if you can
recall when. Just give him dates.

A. I recall one in May of 1984 --
direction, June of 1984. And I recall one in
January of 1985.

Q. Those are the only two that you
recall; is that correct?

A. Let me hear the question once
more to make sure I answered completely my
recollection.

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communications.

Let's hear the

read the

any others.
information that you
potential
Williamson's private

they were all

recall that you recall
1984 now a
private label

with whom you had
that a customer
cigarettes?

is not.

no communi-

Williamson's private

Other than the

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volves negotiations that have concluded, but I'm not
ing to have -- I'm going to instruct him not to
swer any questions on negotiations that are ongoing
day or that are not yet completed.

Q. Mr. Freedman, the communi-
tions with customers or potential customers of Brown
Williamson private label cigarettes, which you had
in which you participated, when did they take
place?

MR. HOGELAND: I didn't ask who
was with.

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let him answer. Again, I have an objection to this
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the lawsuit.

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direction, June of 1984. And I recall one in
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more to make sure I answered completely my
recollection.

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communications.

Let's hear the

read the

any others.
information that you
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1984 now a
private label

with whom you had
that a customer
cigarettes?

is not.

no communi-

Williamson's private

Other than the

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1 ones he's given you?

2 MR. HOGELAND: Customers.

3 A. I cannot recall any
4 communications that I've had with a customer of Brown
5 & Williamson concerning private label cigarettes.

6 Q. Now going back to the June 1984
7 communication, did anyone representing Brown &
8 Williamson, in addition to yourself, participate in
9 that communication or those communications?

10 A. Yes.

11 Q. Who?

12 A. Donald Bores, B-o-r-e-s, Lenny
13 Butler, Steve Enderle, E-n-d-e-r-l-e, and I was the
14 fourth.

15 Q. What is Mr. Bores' position?

16 A. I can't give you his specific
17 title. I don't know his specific title. He's in the
18 sales department.

19 Q. What about Mr. Enderle, do you
20 know his position?

21 A. He is in the field sales force.
22 I don't know his position.

23 Q. Where did this conversation take
24 place?

25 MR. FLUMENBAUM: I think now you

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1 are asking for who the customer was essentially if you
2 ask where it took place. I don't think that's
3 relevant.

4 MR. HOGELAND: Are you going to
5 instruct him not to answer?

6 MR. FLUMENBAUM: Well, I don't
7 think that -- I think you are in an area that is not
8 part of the discovery of this case at the moment, and
9 I don't want you necessarily --

10 MR. HOGELAND: Are you in-
11 structing him not to answer the question?

12 MR. FLUMENBAUM: I just want to
13 explain my reason.

14 MR. HOGELAND: Are you or aren't
15 you?

16 MR. FLUMENBAUM: Yes, I'm going
17 to instruct him not to answer. Also on the ground
18 that I think it's not relevant, and I think you are
19 asking to see which customers we were negotiating
20 with.

21 MR. HOGELAND: I'm certainly not
22 asking for that purpose.

23 MR. FLUMENBAUM: What purpose
24 are you asking for?

25 MR. HOGELAND: For discovery in

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1 this lawsuit.

2 MR. FLUMENBAUM: How is it
3 relevant to discovery in this lawsuit?

4 MR. HOGELAND: I'm not going to
5 argue the law with you. I'm going to tell you that
6 you have interposed a defense on which we are now
7 having first phase of discovery, and Brown &
8 Williamson's offers on private label cigarettes are
9 directly relevant to that -- to disproving that
10 defense. This is relevant and it's ongoing, and I'm
11 going to press for answers.

12 Q. At the June 1984 communication
13 at which you, Mr. Bores, Mr. Butler, Mr. Enderle were
14 present, was more than one representative of the
15 potential customer present?

16 A. There were several people
17 present who I did not know.

18 Q. Was that a face-to-face meeting?

19 A. Yes.

20 Q. Did it take place in Brown &
21 Williamson's offices?

22 A. No, it did not.

23 Q. Did it take place at the
24 premises of a potential customer of Brown &
25 Williamson?

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1 A. That was my understanding.

2 MR. HOGELAND: I press for an
3 answer as to where it took place. I press for an
4 answer as to who the potential customer was.

5 Q. Were any documents or written
6 material given to representatives of a potential
7 customer at this discussion?

8 MR. FLUMENBAUM: If you recall.

9 A. I don't remember.

10 Q. Do you remember any of the
11 discussion?

12 A. Yes.

13 Q. Tell me what you recall of the
14 discussion.

15 MR. FLUMENBAUM: What is the
16 purpose of this?

17 MR. HOGELAND: The purpose of
18 this is discovery. I want to know what offers may
19 have been made; therefore, I want to know what the
20 discussion was. And I have an articulate, in-
21 telligent witness who was present, who is now being
22 examined, and I'm entitled to an answer.

23 MR. FLUMENBAUM: Let me consult
24 with the witness.

25 (The deponent and his counsel left the room.)

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1 MR. FLUMENBAUM: Without waiving
2 our relevance objection to this discussion, and
3 without waiving our ability to object to any further
4 questions of this witness and other witnesses about
5 the private label communications, I will allow Mr.
6 Freedman to answer questions concerning the June '84
7 meeting that you have asked him about in connection
8 with any discussions that he heard or what he observed
9 in the presence of third parties.

10 MR. HOGELAND: Would you read
11 the pending question, please?

12 (Whereupon the Court Reporter read the
13 record.)

14 MR. FLUMENBAUM: Why don't we go
15 back to where it took place and the name of the
16 customer? I also want to again -- we consider this
17 highly proprietary information, and I'm going to take
18 a different position with respect to the February '85,
19 which negotiations may still be ongoing. I just want
20 you to know that, and my letting him talk about the
21 June '84 will not govern the February '85. Go ahead.

22 Q. Who was the customer with whom
23 you had the discussions in June '84, the potential
24 customer?

25 MR. FLUMENBAUM: He didn't say

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1 that he had the discussions; he attended a meeting
2 which the other customers --

3 Q. Who was the customer, Mr.
4 Freedman?

5 A. Kroger.

6 Q. Where did the discussions take
7 place?

8 A. In an office in what I
9 understood to be their headquarters in Cincinnati.

10 Q. And Mr. Enderle is stationed in
11 Cincinnati, is he not?

12 A. I don't believe he is stationed
13 at Cincinnati.

14 Q. He is responsible for the
15 territory and based in Cincinnati?

16 A. He was at that time.

17 Q. Who besides yourself rep-
18 resenting Brown & Williamson was at the February 1985
19 discussion concerning Brown & Williamson 's private
20 label cigarettes?

21 A. Thomas Sandefur, S-a-n-d-e-f-u-
22 r, Jr., Richard Blott, B-l-o-t-t, Don Christensen,
23 Frank S-o-n-e-g-o, Charles Tyler, me. I think that
24 list is complete, to the best of my recollection.

25 Q. And who was the potential

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1 customer?

2 MR. FLUMENBAUM: I'm not going
3 to allow him to answer that on proprietary
4 information.

5 Q. Was that a face-to-face meeting?

6 A. Yes.

7 Q. Did it take place in Brown &
8 Williamson's offices?

9 A. No.

10 Q. Where did it take place?

11 MR. FLUMENBAUM: Instruct him
12 not to answer on grounds you'll be able to identify
13 the customer, and I think that's highly sensitive
14 information. I would represent that there has been no
15 agreement reached with that customer.

16 MR. HOGELAND: There's testimony
17 already to that effect.

18 MR. FLUMENBAUM: I just want the
19 record to be clear.

20 Q. Did that discussion take place
21 at the premises of the potential customer?

22 A. That was the understanding that
23 I had.

24 Q. Who is Mr. Sonego?

25 A. He's a member of our field sales

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1 force.

2 Q. What is his territory?

3 MR. FLUMENBAUM: If you know.

4 A. It certainly includes the
5 Chicago metropolitan area.

6 Q. Who is Mr. Tyler?

7 A. He is also a member of the field
8 sales force.

9 Q. What is his territory?

10 MR. FLUMENBAUM: Very clever way
11 of finding out --

12 A. I have the same problem.

13 MR. FLUMENBAUM: I'm going to
14 instruct him --

15 MR. HOGELAND: We have that. We
16 know it, so what difference does it make.

17 MR. FLUMENBAUM: I probably
18 shouldn't have allowed him to --

19 MR. HOGELAND: I know who it is,
20 anyway, so it doesn't matter.

21 MR. FLUMENBAUM: So let's just
22 move on, then.

23 Q. Let's go back to June '84. At
24 what price or prices did Brown & Williamson offer to
25 manufacture private label cigarettes for Kroger?

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1 A. I don't remember that anymore.

2 Q. At what price or prices did

3 Brown & Williamson offer to manufacture private label
4 cigarettes for the potential customer with whom you
5 met in February 1985?

6 MR. FLUMENBAUM: I'm not going
7 to allow him to answer that, but I'll tell you on the
8 record that Mr. Freedman does not have any
9 recollection of the terms.

10 MR. HOGELAND: I'd just as soon
11 have his recollection as yours.

12 MR. FLUMENBAUM: I told you I
13 was not going to allow him to discuss --

14 MR. HOGELAND: I'm pressing for
15 an answer. Your statement that he has no recollection
16 is absolutely meaningless, and his recollection is
17 quite capable of possibly being refreshed if you would
18 allow me to pursue Liggett's right to discovery.

19 MR. FLUMENBAUM: I was trying to
20 help you in this deposition. I see that's not a --

21 MR. HOGELAND: It's not very
22 helpful for you to testify. The fact that you tell me
23 he has no present recollection doesn't mean that his
24 recollection couldn't readily be refreshed if you
25 would allow him to testify and give --

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1 MR. FLUMENBAUM: I'm not
2 allowing him to testify on these negotiations.

3 Q. Mr. Freedman, have you had any
4 communications with anyone connected with the firm of
5 Hicks, Weston & Spender?

6 MR. FLUMENBAUM: To your
7 knowledge.

8 A. Not to my knowledge. I don't
9 know that, I've ever heard that name.

10 Q. Have you had any communications
11 with L. James Hicks?

12 A. Not to my knowledge.

13 Q. Have you ever heard that name?

14 A. I believe so. If you ask me
15 some more questions, perhaps I can be definite.

16 Q. Would it refresh your
17 recollection if I told you that L. James Hicks has
18 been counsel to ITWAL?

19 A. Yes.

20 Q. Does that refresh your
21 recollection that you may have had communications with
22 him?

23 MR. FLUMENBAUM: That's not what
24 he said.

25 MR. HOGELAND: I'm asking him if

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1 that refreshed his recollection.

2 A. I have never, to the best of my
3 knowledge, ever communicated with Mr. Hicks. We are
4 talking about whether I have ever heard of him.

5 Q. Yes, I understand that. Now in
6 February of 1984 did you attend a meeting at which
7 representatives of Design Works Inc. was present?

8 A. Yes, I did.

9 Q. Do you recall when that was?
10 MR. FLUMENBAUM: You mean a more
11 precise date?

12 MR. HOGELAND: Uh-huh.

13 A. I recall it being the last week
14 in February on a Thursday afternoon if you'd like to
15 be precise.

16 Q. Pretty good.

17 MR. HOGELAND: I don't know that
18 2-24 was a Thursday.

19 Q. I show you what has been marked
20 in a third party deposition as Hunter Deposition
21 Exhibit 17 and a deposition of a Brown & Williamson
22 witness as Beasley Exhibit 3, which will give you the
23 date, it won't tell you the day of the week.

24 Does that document refresh your
25 recollection that you attended a meeting on February

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1 24 in 1984?

2 MR. FLUMENBAUM: His
3 recollection was it was the last week of February, and
4 I think that supports that. I mean I don't think that
5 this document could refresh his actual recollection.

6 Q. The entry on Hunter Exhibit 17
7 dated 2-24-84, is that the meeting that you referred
8 to?

9 A. Off the record.

10 Q. Mr. Barker tells me Thursday was
11 the 23rd.

12 A. Of '84?

13 MR. BARKER: Leap year.

14 Q. That's according to a British
15 calendar so it may not be right.

16 MR. FLUMENBAUM: We are wasting
17 time.

18 A. I remember attending a meeting.

19 Q. In or about that week?

20 A. Yes.

21 MR. FLUMENBAUM: I don't think
22 anyone is concerned about the exact date.

23 Q. Is that the first meeting you
24 attended with respect to generic cigarettes at which a
25 representative of Design Works was also present?

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1 A. To the best of my recollection.

2 Q. What were the circumstances
3 under which you came to attend that meeting?

4 MR. FLUMENBAUM: Objection.
5 Attorney-client privilege, work product privilege.

6 Q. Who asked you to attend that
7 meeting?

8 MR. FLUMENBAUM: Objection.
9 Attorney-client privilege. Work product privilege.

10 Q. Did anyone from Design Works ask
11 you to attend that meeting?

12 MR. FLUMENBAUM: Objection.
13 Attorney-client privilege, work product privilege.

14 MR. HOGELAND: I press for an
15 answer to that question. I press for an answer to all
16 these questions, but that one is absurd.

17 MR. FLUMENBAUM: I stand by the
18 objection.

19 MR. HOGELAND: Is it an
20 instruction not to answer?

21 MR. FLUMENBAUM: Yes.

22 MR. HOGELAND: To the extent you
23 are asserting the attorney-client privilege, I believe
24 it was waived this week when Mrs. Beasley testified
25 that she asked Mr. Freedman -- she or someone from the

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1 marketing department at Brown & Williamson.

2 MR. FLUMENBAUM: Well, I don't
3 believe there has been a waiver of the attorney-client
4 privilege. Ask your next question.

5 MR. HOGELAND: Your instruction
6 stands?

7 MR. FLUMENBAUM: Correct.

8 A. If I can just clarify a silly
9 point just, for the record, my recollection is that the
10 Wednesday is correct and that the 24th is correct.

11 Q. Did Mr. Hunter ask you to attend
12 that meeting?

13 MR. FLUMENBAUM: Objection.
14 Instruct him not to answer.

15 Q. Did Mr. Jones ask you to attend
16 that meeting?

17 MR. FLUMENBAUM: Mr. Hogeland,
18 we've -- you are asking for communications between
19 lawyer and people who, for the record at this point,
20 demonstrates that he gave legal advice to, and I'm not
21 going to permit him to answer.

22 MR. HOGELAND: You misstated the
23 record, but, nevertheless --

24 MR. FLUMENBAUM: Well --

25 Q. Do you represent Mr. Hunter?

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1 MR. FLUMENBAUM: What do you
2 mean by the word represent?

3 Q. Are you his lawyer?

4 MR. FLUMENBAUM: What do you
5 mean by that? Did he provide legal advice?

6 Q. Do you understand the question?

7 MR. FLUMENBAUM: I think that
8 question is ambiguous, did he provide legal advice to
9 Mr. Hunter in connection with this? We've repre-
10 sented on the record that that would so be his
11 testimony. If you want to ask him that question, you
12 can.

13 Q. I ask you are you Mr. Hunter's
14 lawyer or Design Works' lawyer or Mr. Jones' lawyer?

15 MR. HOGELAND: Are you in-
16 structing him not to answer?

17 MR. FLUMENBAUM: I'm in-
18 structing the representation that we've made, and that
19 is that he provided legal advice in connection with
20 these meetings. And the purpose of these meetings was
21 to obtain legal advice.

22 MR. HOGELAND: For whom?

23 MR. FLUMENBAUM: For both.

24 MR. HOGELAND: Now we have your
25 testimony on the record. I'm asking the witness if he

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1 think that's what the record is at this point, and I
2 think what you are asking for is an individual
3 communication, and I don't think that's appropriate.

4 MR. HOGELAND: To assert the
5 privilege that you are asserting, I'm not sure on
6 behalf of whom, does require the preexistence of
7 attorney-client relationship. I've asked this witness
8 if he was the attorney for Design Works, and you've
9 refused to let him answer. The record is clear. Are
10 you going to let him answer the question?

11 MR. FLUMENBAUM: You have Mr.
12 Hunter's testimony, you have Mr. Jones' testimony.

13 MR. HOGELAND: Are you going to
14 let the lawyer answer the question?

15 MR. FLUMENBAUM: Mr. Freedman
16 has testified that he provided legal advice to Design
17 Works.

18 MR. HOGELAND: I asked him if he
19 was Design Works' attorney. He can provide legal
20 advice to anybody he wants to.

21 MR. FLUMENBAUM: Let's go
22 outside before you answer that.

23 (The deponent and his counsel left the room.)

24 MR. FLUMENBAUM: Read back the
25 last question, please.

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1 (Whereupon the Court Reporter read the
2 record.)

3 Q. Mr. Freedman, you testified that
4 you gave legal advice to Design Works at the meeting
5 you attended on February 24, 1984, and my question
6 was: At whose request did you give that legal advice
7 to Design Works?

8 MR. FLUMENBAUM: I'm going to
9 let him answer that question, but without any waiver
10 of the work product or attorney-client privilege.

11 A. Both Brown & Williamson
12 representatives and Design Works representatives asked
13 me for my legal advice on how Design Works should
14 proceed in the project that is the subject of this
15 call report.

16 Q. Which representatives of Design
17 Works asked you for that?

18 A. To the best of my recollection
19 both Mr. Hunter and Mr. Jones.

20 Q. Both of them asked you that?

21 MR. FLUMENBAUM: He's answered
22 your question to the best of his recollection.

23 Q. What was the subject on which
24 they asked your legal advice?

25 MR. HOGELAND: I'm entitled to

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1 that.

2 MR. FLUMENBAUM: No, you are
3 not. Objection.

4 MR. HOGELAND: I'm clearly
5 entitled to that even if it were privileged -- even it
6 were bonafide privileged.

7 Will you allow Mr. Freedman to
8 answer the question now as to whether he is the
9 attorney for Design Works?

10 MR. FLUMENBAUM: I'm not sure
11 whether that question is capable of -- he gave legal
12 advice.

13 MR. HOGELAND: My question is:
14 Will you allow him to answer my question?

15 MR. FLUMENBAUM: I think the
16 question is objectionable as to form, and --

17 MR. HOGELAND: It will be
18 easier, I'll ask it again and see what you say.

19 Q. Were you the attorney for Design
20 Works?

21 MR. FLUMENBAUM: Did he function
22 as an attorney for Design Works, is that what you are
23 asking?

24 MR. HOGELAND: I'm asking him if
25 he was, at the meeting on February 24, an attorney for

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1 Design Works.

2 MR. FLUMENBAUM: I think you are
3 asking for a legal conclusion. He testified that he
4 was asked to give legal advice to Design Works at that
5 meeting, and --

6 MR. HOGELAND: The subject that
7 you won't allow him to identify.

8 MR. FLUMENBAUM: He has
9 testified on the subject. But go ahead.

10 Q. What was the subject?

11 MR. FLUMENBAUM: He referred to
12 the call report that you have marked in evidence, and
13 you've identified those call reports. You don't need
14 him for any further information on that.

15 MR. HOGELAND: You are denying
16 Liggett discovery, obviously.

17 MR. FLUMENBAUM: No, I don't
18 believe so. I'm trying to prevent improper discovery
19 of an attorney.

20 MR. HOGELAND: You are denying
21 legal discovery.

22 MR. FLUMENBAUM: It won't be the
23 first time that we've disagreed on the conduct of this
24 litigation.

25 BY MR. HOGELAND:

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1 Q. Mr. Freedman, did you attend a
2 meeting -- a series of meetings in early March at
3 which a representative of Design Works was present?

4 A. Mr. Hogeland, I attended several
5 meetings at which representatives of Design Works were
6 present. I can't be specific as to March versus
7 February versus April.

8 Q. At each of those meetings
9 did you represent Design Works as an attorney?

10 MR. FLUMENBAUM: Objection as to
11 the form of that. I'll let you ask him if he provided
12 legal advice to Design Works.

13 MR. HOGELAND: Are you
14 instructing him not to answer the pending question?

15 MR. FLUMENBAUM: I think it's
16 objectionable.

17 MR. HOGELAND: Are you
18 instructing him not to answer?

19 MR. FLUMENBAUM: Yes.

20 (A discussion was held off the record between
21 the deponent and his counsel.)

22 Q. Who is Mr. Falk, Mr. Freedman?

23 A. Mr. Falk is a manager at Brown &
24 Williamson who has held various positions, I cannot
25 tell you his present title.

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- 1 Q. I beg your pardon?
- 2 A. I cannot tell you what his
- 3 present title is. I don't know what his present title
- 4 is. He's in the marketing department.
- 5 Q. Is he senior management?
- 6 A. He holds a director position of
- 7 some sort with the company. I can't say whether
- 8 that's senior or upper middle. He is a director.
- 9 Q. Who is Mr. Neff?
- 10 A. Mr. Neff is in the purchasing
- 11 department. He either works with or supervises Mrs.
- 12 Beasley.
- 13 Q. Is he senior management?
- 14 A. His title is manager, to the
- 15 best of my knowledge. I don't know if I would
- 16 consider that senior or middle.
- 17 Q. What about Mrs. Beasley, do you
- 18 consider her senior management?
- 19 A. No, I do not.
- 20 Q. Mr. Hunter I assume you do not
- 21 consider senior management of Brown & Williamson?
- 22 A. I don't consider Mr. Hunter any
- 23 management of Brown & Williamson.
- 24 Q. What was the subject matter of
- 25 the meetings you attended at which one or more

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1 representatives of Design Works was present during the
2 period February, March of 1984?

3 MR. FLUMENBAUM: I'm going to
4 instruct him not to answer. You are asking for
5 privileged communications.

6 Q. I show you packages of
7 cigarettes that have been marked as Hunter Exhibit
8 3A, B and C, and ask you if packages that appear the
9 same as those exhibits were present at any of those
10 meetings?

11 MR. FLUMENBAUM: I'm going to
12 instruct him not to answer, on the grounds of
13 attorney-client and work product.

14 MR. HOGELAND: I press for an
15 answer.

16 Q. Mr. Freedman, I show you an
17 exhibit that has previously been identified as Hunter
18 Exhibit 13, and I ask you if you have seen Hunter
19 Exhibit 13 before?

20 MR. FLUMENBAUM: I believe, Mr.
21 Hogeland, that if I allow him to answer that question,
22 we would be violating the attorney-client and work
23 product privilege. I'm just trying to go through my
24 mind the permutations on the answers. I don't think
25 that's appropriate. If you can --

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1 Q. Mr. Freedman, I show you a four-
2 page document bearing Bate numbers 1338 through 1341
3 previously identified as Hunter Exhibit 19, which
4 includes as Page 1339 the document marked Hunter
5 Exhibit 13. I show you Hunter Exhibit 19 and ask you
6 if you saw it at any time prior to the institution of
7 this lawsuit?

8 MR. FLUMENBAUM: I'm going to
9 instruct him not to answer on the same basis.

10 MR. HOGELAND: I assume your
11 instruction would apply to any question that I might
12 ask about either of these exhibits; is that correct?

13 MR. FLUMENBAUM: I can only
14 instruct him not to answer specific questions.

15 Q. I show you Hunter Exhibit 13 and
16 call your attention to the redaction noted on that
17 page. Is the information redacted anything that you
18 put on that document?

19 MR. FLUMENBAUM: Well, I think
20 you are asking -- well --

21 MR. HOGELAND: Perhaps, if I had
22 a privilege law, I wouldn't have to ask.

23 MR. FLUMENBAUM: I just want to
24 make sure we are not going to violate the privilege by
25 answering.

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1 (The deponent and his counsel left the
2 room.)

3 MR. FLUMENBAUM: I believe we
4 informed you by letter, but the material that was
5 redacted from this particular document was redacted on
6 grounds of attorney-client privilege.

7 MR. BARKER: Right.

8 MR. HOGELAND: That's correct.

9 MR. FLUMENBAUM: Okay. And I
10 cannot allow Mr. Freedman to answer your question
11 without seeming to me to waive his attorney-client
12 privilege and work product responsibility.

13 MR. BARKER: Are you testifying
14 that it's his --

15 MR. FLUMENBAUM: I'm not.
16 Absolutely not. I'm saying that if he testifies one
17 way or the other that it might violate his attorney-
18 client and work product privilege. And I'm not going
19 to allow him to.

20 MR. HOGELAND: Presumably if we
21 had a privilege law, I would know the answers to these
22 questions.

23 Q. Did you ever write on the
24 document that is Hunter Exhibit 13, on the original of
25 the document, Mr. Freedman?

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1 MR. FLUMENBAUM: I'm going to
2 instruct him not to answer.

3 MR. HOGELAND: Are you going to
4 give us a privilege law at sometime, Marty?

5 MR. FLUMENBAUM: At sometime we
6 will. We've had other things we've had to do for you
7 that I think are a greater priority at the moment.

8 MR. HOGELAND: There are a lot
9 of things that are great priorities. You should
10 attend to all of them.

11 Q. Mr. Freedman, did you receive
12 and review any documents or artwork produced or
13 created by Design Works during the period February and
14 March 1984 relating to project G or generic
15 cigarettes?

16 MR. FLUMENBAUM: Attorney-
17 client privilege. Work product.

18 MR. HOGELAND: Are you
19 instructing him not to answer?

20 MR. FLUMENBAUM: Uh-huh.

21 MR. HOGELAND: Can we take
22 another 10 minutes?

23 MR. FLUMENBAUM: As you wish.

24 (A short recess was taken.)

25 Q Mr. Freedman, do you within the

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1 law department of Brown & Williamson have re-
2 sponsibility for matters concerning this case?

3 MR. FLUMENBAUM: How do you mean
4 the term responsibility? Does he have some responsi-
5 bilities involving matters involving this case?

6 MR. HOGELAND: I'll take that.

7 MR. FLUMENBAUM: You can answer.
8 A. The question as amended? I'm

9 sorry.

10 Q. Within the law department of
11 Brown & Williamson do you have some responsibilities
12 concerning this case?

13 A. Yes.

14 Q. Do those responsibilities
15 include responsibilities for supervising or creating
16 file searches and gathering documents for production
17 to Paul, Weiss?

18 A. Yes.

19 Q. In carrying out those re-
20 sponsibilities do you review Liggett's request for
21 documents?

22 A. I have reviewed some, and others
23 I seek advice of counsel.

24 Q. And do you issue instructions to
25 Brown & Williamson employees to forward to you or

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1 directly to New York, documents?

2 MR. FLUMENBAUM: Objection.

3 Calling for privileged communications and work product
4 communications.

5 Q. Are the documents gathered by
6 you and then transferred to Paul, Weiss, or do they go
7 directly from employee files to Paul, Weiss?

8 MR. FLUMENBAUM: What's the
9 relevance of this to this lawsuit?

10 MR. HOGELAND: Are you in-
11 structing him not to answer?

12 MR. FLUMENBAUM: I want you to
13 state the relevance.

14 MR. HOGELAND: Are you
15 instructing him not to answer? This is discovery. We
16 are not talking about relevance, we are talking about
17 discovery.

18 MR. FLUMENBAUM: You just can't
19 ask witnesses irrelevant questions. What's the basis
20 for the question?

21 MR. HOGELAND: Are you in-
22 structing him not to answer?

23 MR. FLUMENBAUM: I'd like a
24 statement of relevancy.

25 MR. HOGELAND: I don't intend to

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1 make a statement of relevance when I'm taking
2 discovery.

3 MR. FLUMENBAUM: I think you are
4 asking for work product and privileged communications.

5 MR. HOGELAND: Are you in-
6 structing him not to answer?

7 MR. FLUMENBAUM: I'd like you to
8 make a statement of relevance. I will --

9 MR. HOGELAND: If it were
10 relevant work product, you would -- that doesn't make
11 any sense, Marty.

12 MR. FLUMENBAUM: I think it's
13 irrelevant, and I also think you are seeking work
14 product information, and I don't see any --

15 MR. HOGELAND: Off the record.

16 (A discussion was held off the record.)

17 Q. Did there come a time when you
18 obtained possession of certain documents from Design
19 Works?

20 MR. FLUMENBAUM: Again without
21 waiving the attorney-client privilege or work product
22 privilege, I'll let him answer that question.

23 A. Yes.

24 Q. When was that?

25 A. I can't come close to a precise

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1 date.

2 Q. Was it in 1984?

3 A. No. It was in connection with
4 the litigation.

5 MR. FLUMENBAUM: No
6 recollection, that's your answer.

7 Q. Was it after the commencement of
8 this lawsuit?

9 A. Yes, I said in connection with
10 the litigation.

11 Q. Did you ask anybody at Design
12 Works to send you documents?

13 MR. FLUMENBAUM: Objection.

14 MR. HOGELAND: Instruction not
15 to answer?

16 MR. FLUMENBAUM: Uh-huh.

17 (A discussion was held off the record
18 between Mr. Hogeland and Mr. Barker.)

19 Q. Was anyone else at Brown &
20 Williamson involved in the gathering of documents for
21 production to Paul, Weiss?

22 MR. FLUMENBAUM: I think you are
23 asking for work product information. And I don't see
24 the relevance of it. I'll let him again answer that
25 one question, but I'm not going to let you go into the

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1 document production. That's pure work product.

2 MR. HOGELAND: I understand your
3 position.

4 A. There were tons and tons of
5 people at Brown & Williamson involved in this
6 production.

7 Q. I'm sorry, was anyone else in
8 the law department involved?

9 MR. FLUMENBAUM: Answer either
10 yes or no.

11 A. Yes.

12 Q. Who?

13 MR. FLUMENBAUM: What's the
14 purpose of this?

15 MR. HOGELAND: I'm having
16 discovery.

17 MR. FLUMENBAUM: You are wasting
18 time is what you are doing.

19 MR. HOGELAND: We will be out of
20 here long before noon as I've said.

21 MR. FLUMENBAUM: I'll let you
22 just give the names.

23 A. Various secretaries.

24 Q. I'll amend the question. Any
25 other lawyers in the law department?

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1 A. I don't know.

2 Q. Mr. Freedman, did you give an
3 affidavit in this lawsuit?

4 A. Yes, I did.

5 MR. HOGELAND: Would you mark
6 this as Freedman Exhibit 6

7 ?

8 (A two-page affidavit was marked
9 Freedman Deposition Exhibit 6, for
10 identification, a copy of which is attached
11 hereto and made a part hereof.)

12 MR. HOGELAND: Wait a minute,
13 Marty. It's unstapled.

14 (A discussion was held off the record.)

15 Q. I show you Freedman Exhibit 6
16 and ask you if you can identify it?

17 A. It purports to be a two-page
18 affidavit signed by me; the second page contains my
19 signature.

20 MR. FLUMENBAUM: Just for the
21 record it's dated August 21st, 1984.

22 A. The first page to the best of my
23 recollection is a copy of the actual affidavit that I
24 signed.

25 Q. Exhibit 6, as far as you can

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1 tell, is a copy of the affidavit that you made August
2 21, 1984, before the notary name; is that correct?

3 A. Yes.

4 Q. Did you --

5 MR. FLUMENBAUM: Just for the
6 record, this document was submitted in connection with
7 motions that were made in this litigation before the
8 United States District Court for the Middle District
9 of North Carolina, Durham Division. This is a
10 publicly-filed document.

11 MR. HOGELAND: That's correct.

12 MR. FLUMENBAUM: Okay.

13 MR. HOGELAND: We were never
14 served with a signed copy, so I just had to get it
15 Federal Expressed in this morning.

16 Q. Where did you swear to this
17 affidavit, Mr. Freedman?

18 A. At my office in Louisville,
19 Kentucky.

20 Q. Did you prepare the affidavit?

21 MR. FLUMENBAUM: Objection.

22 MR. HOGELAND: You instructing
23 him not to answer?

24 MR. FLUMENBAUM: Yes. You are
25 going beyond the August 5th -- beyond the February 5th

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1 order, and --

2 MR. HOGELAND: I'm not going
3 beyond any order.

4 MR. FLUMENBAUM: Of course, you
5 are.

6 MR. HOGELAND: Prior sworn
7 statement of this witness, I simply want it of record.
8 Are you instructing him not to answer?

9 MR. FLUMENBAUM: Yes, your last
10 question.

11 Q. When you swore to the affidavit,
12 which is Exhibit 6, was it your understanding that it
13 would be filed in this action?

14 A. I don't recall what my under-
15 standing was at the time.

16 Q. You don't recall? And your
17 counsel won't let you -- at whose request did you
18 execute this affidavit?

19 MR. FLUMENBAUM: I don't see
20 what basis this has to any permissible areas of
21 inquiry today.

22 MR. HOGELAND: It makes a lot of
23 difference in the positions you have taken and the
24 positions the witness has taken.

25 MR. FLUMENBAUM: Explain that to

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1 me.

2 MR. HOGELAND: I don't have to
3 explain anything to you. This witness has made
4 himself a fact witness in this action.

5 MR. FLUMENBAUM: I disagree.

6 MR. HOGELAND: You may disagree
7 all you want. He's acknowledged the affidavit. And
8 the affidavit --

9 MR. FLUMENBAUM: That's right.

10 MR. HOGELAND: -- in fact was
11 filed.

12 MR. FLUMENBAUM: Fine. Then we
13 are not in dispute. So let's go on to another
14 subject.

15 MR. HOGELAND: Subject to
16 getting answers to all the questions that you have
17 directed the witness not to answer, I have no further
18 questions at this time.

19 MR. FLUMENBAUM: Thank you.

20 (A discussion was held off the record.)

21 MR. HOGELAND: Let's go back on
22 the record.

23 Just while we are here on the
24 record, I want Mr. Barker to make a couple of
25 statements about the document production situation

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1 which he is familiar with.

2 MR. BARKER: Marty, at the
3 deposition that has taken place this morning, you
4 expressed an interpretation of our prior document
5 requests that I just want to clarify. It was my
6 understanding that you had agreed to produce documents
7 concerning prices offered or actually given to Brown &
8 Williamson's generic cigarette customers. And it was
9 our interpretation that that included private label
10 customers who were offered Brown & Williamson's
11 private label cigarettes. That's been our under-
12 standing for the last two months. Is that an
13 incorrect understanding?

14 MR. FLUMENBAUM: Do you have any
15 other comments that you are going to make on the
16 record?

17 MR. BARKER: That's number one.
18 Am I not going to get an answer to that question?

19 MR. FLUMENBAUM: I want to hear
20 everything you are going to say, and then I'll --

21 MR. BARKER: My second one
22 doesn't relate to this, but I expressed yesterday that
23 the witness, Cindy Stephens, who I specifically
24 requested the document deposition person have
25 knowledge about documentation in the field, she

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1 testified that she didn't have any knowledge of the
2 field documentation, and so we would request that
3 Brown & Williamson, that they provide us with a witness
4 who knows about field documentation, and we would
5 request somebody next week on that issue.

6 MR. FLUMENBAUM: Okay. With
7 respect to the latter, I'll take your request under
8 advisement. I recall informing you that I believe
9 that your notice was much too broad, and that there
10 would be no one person. Perhaps if you eventually
11 modified it to ask for people who had sales office
12 expertise, and I thought she fitted that.

13 With respect to the private
14 label, I believe in terms of what we've agreed to
15 produce in terms of documents, I believe that that is
16 that your statement was an accurate statement, and I
17 will double-check that.

18 MR. BARKER: That you have
19 provided private label offers?

20 MR. FLUMENBAUM: Documents
21 relating to private label offers. I think that is an
22 accurate statement. I will double-check that when I
23 get back to New York. That is my current under-
24 standing, and I don't want to commit to something and
25 find out I was wrong. That is my understanding.

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1 MR. BARKER: As long as you get
2 back to us as soon as possible on that issue.

3 MR. FLUMENBAUM: It won't be
4 today.

5 MR. BARKER: In addition, just
6 for the record --

7 MR. FLUMENBAUM: I thought I
8 said I wasn't going to respond until you were done.

9 MR. BARKER: I have some
10 response to the statement that you made, specifically
11 would draw your attention to my June 12th, 1985
12 letter, where I requested that somebody -- that the
13 sales department document deposition be somebody who
14 was familiar with communications between Brown &
15 Williamson's head office and Brown & Williamson's
16 field sales force with respect to offers and sales of
17 Brown & Williamson cigarettes, and --

18 MR. FLUMENBAUM: I think
19 there were additional things in that demand that
20 requested -- in any event, we've responded to your
21 letters, we've responded, we've produced a witness.
22 You have noticed substantive witnesses already who
23 probably will answer most of those questions, in any
24 event.

25 MR. BARKER: But the August 8th

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1 deadline is coming upon us, and we believe that there
2 are substantial documentation that we haven't re-
3 ceived to date.

4 MR. FLUMENBAUM: We are still
5 reviewing files. There is no question about that.
6 And we are doing a very -- what I hope is a very
7 thorough search, and there are still documents that
8 have to be reviewed, there is no question about that,
9 and we are moving on that, and I have so informed you
10 before.

11 MR. BARKER: Thank you.

12 MR. FLUMENBAUM: All right.
13 Thank you.

14 MR. HOGELAND: Off the record.
15 (A discussion was had off the record.)
16 (Witness excused.)

17 * * * * *

18
19 STATE OF KENTUCKY)
20 COUNTY OF JEFFERSON)

21 I, ALICE TANNENBAUM, a notary public within
22 and for the State at Large aforesaid, do hereby
23 certify that the foregoing is a true, correct and
24 complete transcript of the deposition of BARTON
25 FREEDMAN, taken at the time and place set out in the

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1 caption, including objections and remarks of counsel;
2 that the deposition was taken pursuant to notice; that
3 the said witness was duly sworn before giving his
4 deposition; that the appearances were as set out in
5 the caption hereof; that the said deposition was taken
6 down by me in stenotypy and afterwards transcribed on
7 a computer under my direction.

8 I further certify that I am neither attorney
9 or counsel, for, nor related to or employed by any of
10 the parties to the action in which this deposition is
11 taken; and further, that I am not a relative or
12 employee of any attorney or counsel employed by the
13 parties hereto, or financially interested in the
14 action.

15 Given under my hand as notary aforesaid,
16 this the 29th day of June, 1985.

17 My commission expires September 5, 1987.

21 -----
22 ALICE TANNENBAUM, C.P., C.M.

23 Court Reporter and Notary Public
24
25

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